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James E. Salven

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10 (Fresno Division)

| | | |
|-------------------------|---|-----------------------|
| 11 In re: |) | Case No: 09-60084 |
| 12 Tommy D. Phipps and |) | Chapter 7 Case |
| 13 Madeline E. Preheim, |) | DC No. CWC-2 |
| 14 P.O. Box 804 |) | |
| 14 Auberry, CA 93602 |) | |
| 15 SS. XXX-XX-5518 |) | |
| 16 SS. XXX-XX-5110 |) | Date: August 17, 2011 |
| 17 Debtors. |) | Time: 9:00 a.m. |
| |) | Place: Department A |
| |) | Courtroom 11 |

18 **MOTION FOR AUTHORIZATION TO SELL**
19 **REAL PROPERTY OF THE ESTATE**
20 **(28824 Cassandra Road, Tollhouse, CA)**

21 To: The Honorable Whitney Rimel, U.S. Bankruptcy Judge:

22 James E. Salven, the duly qualified and acting trustee in
23 this case, pursuant to 11 U.S.C. § 363(h) and (j) and Federal
24 Rule of Bankruptcy Procedure 6004, respectfully represents:

25 1. This Court has jurisdiction of this matter under
26 28 U. S. C. §§ 1334 and 157(a).

27 2. On October 19, 2009, the Debtors filed a petition under
28 Chapter 7 of the Bankruptcy Code, in the above-entitled Court.

1 James E. Salven, has been appointed Chapter 7 Trustee in this
2 case.

3 3. Among the assets which constitute property of the
4 bankruptcy estate is an undivided one-half interest of the
5 Debtor, Thomas D. Phipps, in real property located at 28824
6 Cassandra Road, Tollhouse, CA, APN 140-240-14 (the "Subject
7 Property"), more particularly described in the Preliminary Title
8 Report dated May 27, 2011 of Fidelity National Title Company
9 attached to the List of Exhibits filed concurrently herewith.

10 4. Claudine Phipps (the "Co-owner"), the mother of Tommy D.
11 Phipps, owns an undivided one-half interest in the subject real
12 property. Pursuant to an Order of the court entered on October
13 21, 2010 (Docket No. 29 in Adversary Proceeding 10-01084), the
14 Trustee is authorized to market and sell said Co-owner's
15 undivided one-half interest in the Subject Property pursuant to
16 11 U.S.C. § 363(h) and (j), with such sale to be subject to
17 further court approval.

18 5. The Trustee has entered into an agreement with Joseph
19 and Michele Currin (the "Buyers"), 3149 Butte Street, Santa
20 Clara, CA 95051, or nominee, for sale of the Subject Property for
21 \$40,000.00 in cash upon the terms and conditions described in the
22 Vacant Land Purchase Agreement and Joint Escrow Instructions
23 dated May 15, 2011 (the "Agreement") which is annexed to the List
24 of Exhibits filed concurrently herewith.

25 6. In addition, the Agreement provides for the transfer to
26 the Buyers of a mobile home #AAR1596 located on the Subject
27 Property which has no value.

28 7. The Buyers have deposited the sum of \$1,000.00 with the

1 Trustee to be held in trust pending court approval of the sale.
2 The sale is subject to Bankruptcy Court approval and subject to
3 third party overbids at the hearing on this matter. Prior to the
4 hearing on this matter, all third party bidders must deposit
5 \$1,000.00 in certified funds with the Trustee and agree to
6 execute a contract with terms and conditions identical to the
7 Agreement in order to be eligible to make overbids at the
8 hearing. All deposits of unsuccessful bidders are fully
9 refundable.

10 8. Under the terms of a separate agreement, London
11 Properties, the bankruptcy estate's licensed real estate broker,
12 will split a brokerage fee of 6% of the sales price with
13 Guarantee Real Estate, buyer's licensed real estate broker.

14 9. The Trustee is informed and believes that the bankruptcy
15 estate will not incur any adverse tax consequences from the sale.

16 10. Said sale will fully pay all liens, encumbrances,
17 taxes, etc. on the property. The costs and expenses of such sale
18 include, but are not limited to, all closing costs, all property
19 taxes and assessments and the real estate brokers' commission.

20 11. In the event that the Co-owner elects to not purchase
21 the property at the price at which this sale is to be consummated
22 under 11 U.S.C. § 363(i), the Co-owner will receive one-half of
23 the net sale proceeds, less the costs and expenses of such sale,
24 directly from escrow pursuant to 11 U.S.C. § 363(j). The costs
25 and expenses of such sale include, but are not limited to, all
26 closing costs, all property taxes and assessments and the real
27 estate brokers' commission.

28 12. Said sale represents the Trustee's best efforts to sell

1 the Subject Property for the highest possible price and the
2 Trustee believes that the proposed sale is in the best interest
3 of the estate.

4 WHEREFORE, the Trustee, James E. Salven, prays for an Order
5 of this Court:

6 1. Authorizing the Trustee, pursuant to 11 U.S.C. § 363(h)
7 to sell the interest of the Debtor, Thomas D. Phipps, and the
8 interest of the Co-owner, Claudine Phipps, in the real property
9 located at 28824 Cassandra Road, Tollhouse, CA, APN 140-240-14,
10 and the mobile home #AAR1596 to Joseph and Michele Currin, or
11 nominee, for the sum of \$40,000.00 in cash upon the terms and
12 conditions in the above-described Agreement;

13 2. Authorizing the Trustee to pay through escrow all costs
14 and expenses of the sale including but not limited to, all
15 closing costs, all property taxes and assessments and the payment
16 of a real estate commission in the amount of 6% of the sale price
17 to be split between London Properties, the bankruptcy estate's
18 licensed real estate broker, and Guarantee Real Estate, buyer's
19 licensed real estate broker;

20 3. Authorizing the Co-owner, Claudine Phipps, to receive
21 one-half of the net sale proceeds directly from escrow after
22 payment of all costs and expenses of the sale pursuant to 11
23 U.S.C. § 363(j);

24 4. Authorizing such overbids as may be submitted at the
25 time of the hearing on this Motion, subject to such terms and
26 conditions as may be required by the Trustee and/or the Court;


27 5. Authorizing the execution and delivery by the Trustee of
28 any and all documents which may be necessary or convenient to
conclude the transaction; and

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6. Granting such other and further relief as the court
deems proper.

Dated: 7-13-11

Respectfully Submitted,

Law Office of Carl W. Collins


Carl W. Collins, Esq.
Attorney for Trustee